

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BARRY JOHN SANFORD,
Petitioner,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,
Respondent.

Case No. 20-05389 BLF (PR)

**ORDER GRANTING MOTION FOR
STAY; INSTRUCTIONS TO
CLERK; ADMINISTRATIVELY
CLOSING CASE**

(Docket No. 15)

Petitioner, a state prisoner proceeding *pro se*, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his state conviction. The Court dismissed the petition with leave to amend, for Petitioner to file notice that he wishes to either strike the unexhausted claims or a motion for stay. Dkt. No. 12. Petitioner has filed motion for stay to exhaust additional claims in state court. Dkt. No. 15. For the reasons discussed below, the motion for a stay is **GRANTED**.

BACKGROUND

According to the petition, Petitioner was found guilty by a jury in Humboldt County Superior Court of several counts involving acts against a child, and was sentenced to 27 years in state prison on February 23, 2017. Dkt. No. 1 at 30. Petitioner appealed the

1 matter to the state appellate and high courts based on two claims, but without success. Id.
2 at 34.

3 He filed the instant action on August 4, 2020, although the petition bears a signature
4 dated May 23, 2020. Id. at 35. When he filed this action, Petitioner requested more time
5 to include additional claims. Dkt. No. 1 at 1; Dkt. No. 11 at 3. The four claims he raised
6 in the instant action were different from the two claims that he raised on direct appeal.
7 Dkt. No. 1 at 31-33. Liberally construing the petition, the Court found it contained both
8 exhausted and unexhausted claims, and therefore subject to dismissal under *Rose v. Lundy*,
9 455 U.S. 509, 510 (1982). Dkt. No. 12 at 3-4.

11 DISCUSSION

12 A. Motion to Stay

13 Petitioner requests a stay under *Rhines v. Webber*, 544 U.S. 269 (2005), to exhaust
14 new claims that were not raised by appellate counsel on direct appeal. Dkt. No. 15. The
15 unexhausted claims involve allegations of judicial misconduct by the trial court for
16 denying him counsel, ineffective assistance of advisory counsel, prosecutorial misconduct,
17 and ineffective assistance of appellate counsel. *Id.* at 3-4.

18 Prisoners in state custody seeking to challenge collaterally in federal habeas
19 proceedings either the fact or length of their confinement are first required to exhaust state
20 judicial remedies, either on direct appeal or through collateral proceedings, by presenting
21 the highest state court available with a fair opportunity to rule on the merits of each and
22 every claim they seek to raise in federal court. *See* 28 U.S.C. § 2254(b),(c); *Rose v. Lundy*,
23 455 U.S. 509, 515-16 (1982); *Duckworth v. Serrano*, 454 U.S. 1, 3 (1981); *McNeeley v.*
24 *Arave*, 842 F.2d 230, 231 (9th Cir. 1988). The exhaustion requirement is satisfied only if
25 the federal claim (1) has been “fairly presented” to the state courts, *see id.*; *Crotts v. Smith*,
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1 73 F.3d 861, 865 (9th Cir. 1996); or (2) no state remedy remains available, *see Johnson v.*
2 *Zenon*, 88 F.3d 828, 829 (9th Cir. 1996). *Peterson v. Lampert*, 319 F.3d 1153, 1155-56
3 (9th Cir. 2003) (en banc). As discussed above, the Court has already determined that the
4 petition contains claims that have not been exhausted in the state courts. *See supra* at 2.
5 Accordingly, the instant petition is a mixed petition.

6 District courts have the authority to issue stays and AEDPA does not deprive them
7 of that authority. *Rhines v. Webber*, 544 U.S. 269, 277-78 (2005). However, the district
8 court's discretion to stay a mixed petition is circumscribed by AEDPA's stated purposes of
9 reducing delay in the execution of criminal sentences and encouraging petitioners to seek
10 relief in the state courts before filing their claims in federal court. *Id.* at 277. Because the
11 use of a stay and abeyance procedure has the potential to undermine these dual purposes of
12 AEDPA, its use is only appropriate where the district court has first determined that there
13 was good cause for the petitioner's failure to exhaust the claims in state court and that the
14 claims are potentially meritorious. *Id.* The Court finds that Petitioner has not engaged in
15 dilatory tactics and the unexhausted claims above are potentially meritorious.
16 Consequently, Petitioner's motion to stay this action while he exhausts all claims in the
17 state courts will be granted.
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20 CONCLUSION

21 For the foregoing reasons, the Court orders as follows:

22 1. Petitioner's request to stay the petition is **GRANTED**. Dkt. No. 15. The
23 above-titled action is hereby **STAYED** until **twenty-eight (28) days** after the state high
24 court's final decision on Petitioner's unexhausted claims.

25 2. If Petitioner intends to have this Court consider the unexhausted claims, he
26 must have properly presented them to the Supreme Court of California, and if he has not
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1 obtained relief in state court, thereafter notify the Court **within twenty-eight (28) days** of
 2 the California Supreme Court's decision, by filing a motion to reopen this action and
 3 stating therein that all the claims in the instant federal petition have been exhausted. If he
 4 has not already done so, Petitioner must file a state habeas petition **within sixty (60) days**
 5 from the date this order is filed and file notice with this Court that he has done so.

6 3. The Clerk shall **ADMINISTRATIVELY CLOSE** the file pending the stay
 7 of this action. This has no legal effect; it is purely a statistical procedure. When Petitioner
 8 informs the Court that he has exhausted his additional claims, the case will be
 9 administratively re-opened.

10 This order terminates Docket No. 15.

11 **IT IS SO ORDERED.**

12 **Dated: _January 11, 2021_**


 BETH LABSON FREEMAN
 United States District Judge

25 Order Granting Stay; Inst. To Clerk
 26 PRO-SE\BLF\HC.20\05389Sanford_stay